

STATE OF MICHIGAN
COURT OF APPEALS

BRIDGET HOWARD,

Plaintiff-Appellant,

v

LUCIA ZAMORANO, M.D., HARPER
HOSPITAL, DETROIT MEDICAL CENTER and
UNIVERSITY NEUROLOGICAL
ASSOCIATES, P.C.,

Defendants-Appellees,

and

JOHN R. JACOBS, M.D., JOHN RACHEL, M.D.,
and GENGHIS PORTILLO, M.D.,

Defendants.

UNPUBLISHED

August 17, 2006

Nos. 259946; 262557

Wayne Circuit Court

LC No. 00-016152-NH

Before: Davis, P.J., and Cooper and Borrello, JJ.

PER CURIAM.

In Docket No. 259946, plaintiff appeals as of right from the trial court's judgment of no cause of action in favor of defendants on remand from this Court. In Docket No. 262557, plaintiff appeals as of right from the trial court's order granting defendants' motion for attorney fees and costs as case evaluation sanctions in the amount of \$125,379.94. We vacate the trial court judgment of no cause of action and the order imposing case evaluation sanctions for lack of jurisdiction. We find that jurisdiction to enforce the judgment of this Court is not restored to the trial court until the Supreme Court proceedings in this matter are concluded.

I. Facts and Procedural History

In 2000, plaintiff filed a medical malpractice action against defendants. At the conclusion of the trial, a jury entered a verdict in plaintiff's favor, and the trial court denied defendants' motion for judgment notwithstanding the verdict (JNOV). Defendants appealed to this Court and, on October 14, 2004, this Court released an unpublished opinion finding that the trial court should have granted defendants' motion for JNOV. *Howard v Zamorano*, unpublished opinion of the Court of Appeals, issued October 14, 2004 (Docket No. 244610) (*Howard I*).

On October 28, 2004,¹ defendants filed a motion for entry of judgment in the trial court, and the trial court entered that judgment on remand, 19 days *before* the expiration of the period during which plaintiff could file an application for leave to appeal to the Michigan Supreme Court.² Plaintiff filed a motion for reconsideration, asking the trial court to vacate its order, arguing that she had until November 29, 2004, to file an application for leave to appeal to the Supreme Court pursuant to MCR 7.302(C)(1), and that a timely filed application would act as a stay of the Court of Appeals decision. Because that time limit had yet to expire, plaintiff argued that the trial court's entry of a judgment on remand was premature. The trial court denied plaintiff's motion.

On November 29, 2004,³ plaintiff timely applied for leave to appeal to the Michigan Supreme Court. While plaintiff's application for leave to appeal was pending in the Supreme Court, defendants filed a "motion for taxed costs, reasonable attorneys' fees and case evaluation sanctions" pursuant to MCL 600.2405, MCL 600.2549, MCR 2.635, and MCR 2.403(O). Plaintiff argued that the trial court lacked jurisdiction to consider defendants' motion while her application for leave to appeal was pending in the Supreme Court pursuant to MCR 7.302(C)(5)(a). Plaintiff also contended that the trial court's judgment of no cause of action on remand from this Court was not a "verdict" under MCR 2.403(O)(2) for which case evaluation sanctions could be awarded.

On July 19, 2005, the Supreme Court held plaintiff's application for leave to appeal in abeyance pending the Court's resolution in *Woodard v Custer*, 473 Mich 1; 702 NW2d 522 (2005). *Howard v Zamorano*, 699 NW2d 305 (2005). On July 31, 2006, the Court issued an opinion resolving *Woodard*, and while we recognize that the resolution of *Woodard* sets precedent that will likely resolve plaintiff's appeal in favor of defendant, nonetheless plaintiff's application for leave to appeal is still being held in abeyance, nearly two years after the trial court released the judgment at issue here. We therefore must find that the trial court overstepped its authority in issuing the judgment and order before plaintiff's appellate process was finished.

II. Docket No. 259946

Trial Court Judgment of No Cause of Action

We agree with plaintiff that the trial court improperly entered the judgment of no cause of action against her before the expiration of the period during which she was entitled to file an application for leave to appeal to the Michigan Supreme Court.

¹ Notably, just 4 days after this Court had rendered its opinion.

² Plaintiff asserts that she objected to the entry of this proposed order. While no written objection appears in the lower court record, defendants have not challenged that assertion in their appellate brief.

³ The 42-day time limit to file that application actually expired on November 25, 2004, or Thanksgiving Day. Accordingly, plaintiff's time to file her application for leave to appeal was extended until the following Monday. MCR 1.108(1).

The proper interpretation and application of a court rule is a question of law, which we review de novo. *Haliw v Sterling Hgts*, 471 Mich 700, 704; 691 NW2d 753 (2005), on rem 266 Mich App 444; 702 NW2d 637 (2005). The principles that govern statutory interpretation apply equally to the interpretation of court rules. *Id.* When the language of a court rule is unambiguous, we must follow it as written. *Grievance Administrator v Underwood*, 462 Mich 188, 194; 612 NW2d 116 (2000). We may not read into a court rule any omitted provisions. *AFSCME v Detroit*, 468 Mich 388, 400; 662 NW2d 695 (2003).

MCR 7.215(F)(1)(a) provides that “the Court of Appeals judgment is effective after the expiration of the time for filing an application for leave to appeal to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court.” Both this Court and the Supreme Court have interpreted MCR 7.215(F)(1)(a) to impose a stay of proceedings pending the Supreme Court’s action on an application for leave to appeal.⁴ MCR 7.302(C)(5)(a) provides that: “If the Court of Appeals decision is a judgment under MCR 7.215(E)(1), an application for leave to appeal stays proceedings on remand unless the Court of Appeals or the Supreme Court orders otherwise.” Here, plaintiff did timely file an application for leave, and the judgment of this Court in this matter is therefore not effective yet, and the proceedings in the circuit court with respect to that judgment must be stayed.⁵

We find that the entry of the judgment amounted to an improper exercise of jurisdiction, and accordingly, we vacate that judgment.

III. Docket No. 262557

Trial Court Order of Case Evaluation Sanctions

Plaintiff argues that the court erred in ordering case evaluation sanctions because the decision of this Court did not qualify as a “verdict” for purposes of MCR 2.403(O), governing case evaluation. We disagree with this analysis, although ultimately we agree with plaintiff’s argument that the order awarding case evaluation sanctions was premature. Contrary to plaintiff’s argument on appeal, it is well established that the final result of a case following appellate review qualifies as a “verdict”: “it is the ultimate verdict that the parties are left with after appellate review is complete that should be measured against the [case] evaluation [award]

⁴ *Johnson v White*, 261 Mich App 332, 347-348; 682 NW2d 505 (2004) (“[A] timely application for leave to appeal to the Supreme Court operates as a stay of the Court of Appeals judgment regarding its enforcement by the prevailing party to that action.”) (citing *In re JK*, 468 Mich 202, 217; 661 NW2d 216 (2003)).

⁵ We add that the trial court is precluded from executing or enforcing the opinion of this Court until the record is returned to the trial court: “execution on the Court of Appeals judgment is to be obtained or enforcement proceedings had in the trial court or tribunal after the record has been returned.” MCR 7.215(F)(1)(b). This Court sent the record to the Supreme Court when plaintiff filed her application for leave to appeal. See also *Luscombe v Lever Bros Co*, 212 Mich App 537, 540; 539 NW2d 210 (1995) (“Upon return of the record, the lower court is again vested with jurisdiction over the cause.”).

to determine whether sanctions should be imposed on a rejecting party pursuant to MCR 2.403(O).” *Haliw, supra* at 710 (quoting *Keiser v Allstate Ins Co*, 195 Mich App 369, 374-375; 491 NW2d 581 (1992)).

Pursuant to MCR 2.403(O)(1), because plaintiffs here rejected the case evaluation and proceeded to a verdict,⁶ and that verdict was less favorable to plaintiffs than the case evaluation, plaintiffs “must pay the opposing party’s actual costs.” However, this is only the case *if* the verdict as it stands now remains the final verdict after the Supreme Court proceedings in this matter are concluded.

Here, the trial court judgment, a jury verdict favoring plaintiff, would not have resulted in case evaluation sanctions. The judgment of this Court, favoring defendant, gives rise to the case evaluation sanctions. We find therefore that the imposition of those sanctions by the trial court after this matter was remanded to it by this Court is precluded until the Supreme Court proceeding is concluded. MCR 7.302(C)(5)(a) (“ . . . an application for leave to appeal stays proceedings on remand . . .”). This judgment of the Court of Appeals may not take effect until the final “disposition of the case by the Supreme Court.” MCR 7.215(F)(1)(a).

Accordingly, we find that the trial court erred in ordering case evaluation sanctions before the Supreme Court proceedings are concluded. We note that logic dictates the same result, as the Supreme Court proceedings may change the verdict again, and case evaluation sanctions may not after all be warranted.

The trial court judgment of no cause of action and the trial court order of case evaluation sanctions are vacated.

/s/ Alton T. Davis
/s/ Jessica R. Cooper
/s/ Stephen L. Borrello

⁶ MCR 2.403(O)(2)(c) provides that for purposes of the rule, the term “verdict” includes: (a) a jury verdict, (b) a judgment by the court after a nonjury trial, or (c) a judgment entered as a result of a ruling on a motion after rejection of the case evaluation.